IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/42514/2018

(Arising out of Order-in-Original No. 95/2018 CH. N. GST (Commr.) dated 1.10.2018 passed by the Principal Commissioner of GST & Central Excise, Chennai North Commissionerate)

M/s. Wheels India Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai North Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **14.03.2019**

Final Order No. **40487 / 2019**

Brief facts are that the appellants are engaged in manufacture of wheels and components for cars, jeeps, tractors, commercial vehicles etc. and are registered with the Central Excise Department. They are availing CENVAT credit of duty paid on inputs, capital goods and service tax paid on various services. It was noticed that the assessee had availed CENVAT credit of service tax paid on various input services including outward freight. Show Cause Notice was issued proposing to recover the ineligible availed credit along with interest and also for imposing penalty. After due process of law, the adjudicating authority allowed CENVAT credit in respect of all services proposed in the Show Cause Notice but denied in respect of GTA service. Hence appellant is now before the Tribunal.

2. The ld. counsel Shri M. Kannan appeared on behalf of the appellant and submitted that the appellant has sold goods to the customers on FOR basis. Therefore, the place of removal is the buyer’s premises. The adjudicating authority has considered that the appellant is not eligible for the credit of the service tax paid on the freight for outward transportation of goods upto the buyer’s premises. He submitted that though the Hon’ble Supreme court had rendered in Commissioner of Central Excise Vs. Ultra Tech Cement Ltd. – 2018 (9) GSTL 337 (SC) that the credit on GTA service upto the buyer’s premises is not eligible, thereafter Circular F. No. 116/23/2018-CX3 dated 8.6.2018 has been issued by the Board clarifying the place of removal in the case where the sale takes at buyer’s premises. In the present case, the place of removal is the buyer’s premises, this aspect has not been considered by the authority below. He therefore requested to remand the matter to the adjudicating authority for reconsideration on the basis of the circular issued by the Board.

3. The ld. AR Shri L. Nandakumar supported the findings in the impugned order. He submitted that the appellant has to produce documents to prove that the place of removal is the buyer’s premises.

4. Heard both sides.

5. The issue is with regard to disallowance of credit on GTA service. The Hon’ble Supreme Court in the case of Ultra Tech Cement Ltd. (supra) has held that credit is eligible from the place of removal upto the buyer’s premises. However, in the case of Roofit Industries Ltd. reported in 2015 (319) ELT 221 (SC), the Hon’ble Apex Court has held that when the sale is on FOR basis, all the charges / cost have to be included in the assessable value for the payment of central excise duty. Thus, in such cases, when the sale takes at buyer’s premises, the place of removal is the buyer’s premises. The Board has clarified in their circular dated 8.6.2018 that when the transaction / sale is on FOR basis, the place of removal would be the buyer’s premises. Therefore, it is necessary to determine the place of removal to consider the eligibility of credit of service tax paid on freight charges upto the buyer’s premises. For this purpose, I deem it fit to remand the matter to the adjudicating authority who shall look into the issue of eligibility of credit on GTA service after determining the place of removal. In doing so, the adjudicating authority shall take into consideration the circular

issued by the Board as well as the decision of this Tribunal vide Final Order No. A/10373/2019 dated 25.2.2019 in the case of Ultra Tech Cement Ltd. Vs. Commissioner of Central Excise. The impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority with the above direction.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex